

BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
Case No. 42445 INT/ARB-5297
Decision No. 26190-A

In the Matter of the Petition of
MISHICOT SCHOOL DISTRICT
To Initiate Arbitration
Between Said Petitioner and
MISHICOT EDUCATION ASSOCIATION

Stanley H. Michelstetter II
Arbitrator

Appearances:

Dennis W. Muehl, Director, appearing on behalf of the Association.

William G. Bracken, Director, appearing on behalf of the

ARBITRATION AWARD

Mishicot School District, herein referred to as the "Employer," having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.70(4)(cm), Wis. Stats., between it and Mishicot Education Association, herein referred to as the "Association," and the Commission having appointed the Undersigned as Arbitrator on October 26, 1989; and the Undersigned having conducted a hearing for the public followed by an adversarial public hearing, all on January 15, 1990, in Mishicot, Wisconsin. After the close of the hearing, each of the parties filed post hearing briefs, reply briefs and objections to reply brief, the last of which was received March 16, 1990.

ISSUES

This matter involves the parties' July 1 1989, to June 30, 1991, agreement. The parties final offers comprise the issues in this case; however, I summarize them as follows. The sole issues are the general wage increase for each year. There is no dispute over the structure of the salary schedule.

		Employer Costing	Association Costing
1989-90	Employer	Salary \$1,682/6.0%	\$1,678/6.0%
		Package 2,566/7.02%	2,568/7.00%
	Ass'n.	Salary \$1,801/6.4%	1,797/6.42%
		Package 2,709/7.41%	2,710/7.39%
1990-1	Employer	Salary \$1,732/5.83%	1,731/5.83%
		Package 2,736/7.0%	2,542/6.47%
	Ass'n.	Salary \$1,956/6.56%	1,955/6.56%
		Package 3,007/7.66%	2,814/7.14%

POSITIONS OF THE PARTIES

The Employer indicates that the main issues separating the parties are the use of total package versus salary only comparisons and the application of comparisons to these facts. It notes the parties essentially agree as to costing for the 1989-90, but disagree as to the 1990-1 costing primarily with respect to health insurance. The Employer uses the same 24% increase it received for 1989-90, while the Association uses a 15% figure. It argues that because experts indicate that health insurance costs are expected to rise at the rate of 24% per year, the Union's health insurance assumption is unreasonably low and should be disregarded by the arbitrator. It notes that the Association's position as to estimates for health insurance has been contradictory when it has negotiated health premium employer maximum contributions elsewhere.

Essentially, the parties agree as to which school districts are generally comparable. The Employer argues that the Sturgeon Bay and Valders settlements should not be given weight in this proceeding in that they occurred in 1988, because there has been a substantial change in economic and political circumstances. Alternatively, it argues that Sturgeon Bay is no longer an appropriate comparable because 1. it is no longer in the same athletic conference 2. is larger 3. substantially a more urban and higher income area than Mishicot 4. with a significantly better tax base 5. is geographically furthest of all the comparable districts.

Excluding the two settlements, the Employer argues that its offer is more comparable than the Association's, except for the 1990-1 salary only increase which is close. It also notes that the Algoma settlement is 6.7% total package, but that the teachers accepted a 10% maximum employer contribution on the health insurance. The Employer notes that it has increased its salary schedule position at each of the benchmarks and is competitive at all levels.^{1/} It, also, argues that unit teachers have received the fourth highest average overall increase among the eleven comparables and the proposal exceeds the state-wide average increase in annual pay, national figures. Similarly, it notes state employees received 3.5% for 1988-9 and 4% for 1990-1 and major collective bargaining agreements' settlements in the first nine months of 1989 provided first year settlements of 3.7% and 3.1% overall.

The Employer believes that the use of state wide comparisons is of little value. It, also, believes that its offer is closer to the cost of living for the relevant years and teachers have historically done well compared to cost of living, even if increment were omitted from the analysis.

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The parties stipulated that in their last settlement, teachers were held back one step.

The Employer argues that total package method of analysis, rather than salary only, wage rate or dollars per returning teacher methods, is the best method of analysis. It notes that particularly under the facts of this case, wage only and wage rate comparisons are skewed in that Denmark and Sturgeon Bay have not allowed their staffs to move up an experience increment in on the salary schedule for 1990-1.

The Employer, also, takes the position that its offer is supported by the interests of the public. It notes that among the districts the parties view as comparable, Mishicot is among the lowest in average total income, but is still faced with a loss of state aid reflected in a substantial 12.1% property tax levy increase for 1989-90, fourth highest among the comparable schools. It argues there is little justification for raising teacher salaries beyond inflation adjustments since there is currently an adequate supply of them in the job market and no significant turnover due to salaries. While it concedes farm conditions have improved slightly, it notes many farmers are recovering from the effects of the drought and low milk support prices. In any event, it believes that since Arbitrator Petrie did not consider local economic conditions determinative when they were worse, they ought not be determinative when they are slightly improved. It, also, argues that tax restraint can only occur with spending restraint and that Wisconsin, as a whole, has one of the highest tax efforts in the nation.

The Employer re-emphasizes that it should be given heavy consideration for maintaining the existing health benefit and assuming the risk of unknown increase. It, also, denies that the arbitrator has any role in making any fundamental adjustment in teacher salaries, but instead that the same is a role for legislation at the state level.

The Union takes the position that this dispute is clearly defined. The parties have little difference in their costing methodology and agree to the group of comparables. For 1989-90, the Board proposes \$1,678 per returning teacher (6%), the Union proposes \$1,797, (6.42%). For 1990-1 the Union costs the parties positions at \$1,731 per returning teacher, (5.83%) (Employer) and the Union's position at \$1,955, (6.56%) per returning teacher. The Union assumes a 15% growth in health insurance, while the Employer assumes 24%. The Association, contrary to the Employer, costs WRS and Social Security against extra curricular pay.

It argues that the comparability pool has been well established. The parties have both used Algoma, Brillion, Chilton, Denmark, Freedom, Kewaunee, Kiel, Reedsville, Southern Door, Sturgeon Bay and Valders as the appropriate area comparison group. Similarly, two arbitrators have previously used the same group. Accordingly, the Association urges the arbitrator to reject any change in the established comparability group or to prioritize or give different settlements uneven weight. Since eight have settled and allegedly support the Association's position, the Association urges that on this basis

alone, its offer should be adopted.

The Association takes the position that total package comparisons should not be the primary comparison method, at least, not in the second year. It argues that total packages do not represent the real cost to employers or the real value of settlements. Further, such comparisons are of little value in the second year because only four of eleven schools settled, the parties differ so markedly with respect to health insurance costing, and various parties have used various costing methods. It views the health insurance predictions at Mishicot as too speculative, to be useful. It, also, argues that the total package figures for other districts lack credibility. Also, it argues that the use of total package figures for other districts is not a representation of what parties would voluntarily settle for because many of their health increases turned out to be higher or lower than expected. Alternatively, the Association urges the use of the average dollar, rather than mere increase percentage, figures by which calculation Mishicot teachers are substantially behind.

In any event, the Union views adoption of its offer as appropriate because even if the Employer's offer is adopted, this unit's average total compensation will be behind the average of the comparable districts.

The Association argues that salary benchmark comparisons are not particularly useful in this matter because area parties have in the past not advanced teachers in their respective salary schedules on some occasions and because the parties here have changed the salary schedule structure. It urges that the arbitrator rely upon dollars per returning teacher as a better method of comparison than total package comparison or benchmark analysis, as Arbitrator Petrie had done in a prior award between the parties, Mishicot School District (Med/Arb-4106) 10/87.

The Association takes the position that the cost of living criteria should be weighed by the pattern of settlements, instead of directly. It indicates that public sentiment has recognized the need to increase salaries of teachers beyond inflation. Similarly, when inflation was high, employers successfully took the same position as the Association herein and it sees no reason why they should be allowed to change their view now. Relying on Arbitrator Kerkman's rationale in Elkhart Lake-Glenbeulah School District (Dec. No. 25005-A) 5/88, the Association notes that the Employer has not made a cost of living proposal, there is a settlement pattern in excess of cost of living and there is overriding public sentiment in favor of higher teacher salaries. It denies that cost of living comparisons starting in 1981 are fully descriptive and notes that for many years prior teacher salaries did not keep pace with the double digit inflation.

The Association argues that the welfare of the public does not support different treatment for Mishicot. While the district did have a substantial increase in tax rate, it still enjoys one of the lowest tax rates among the comparables and about the tenth

lowest tax rate in the state. It notes that teachers in Mishicot have a high pupil-teacher ratio and yet are among the lowest paid in the state. It notes that only 14% of the district is employed in agriculture and that, in any event, agricultural conditions have improved over the last year. It argues that 40% of the area employment is in manufacturing and employment in the local manufacturing sector has increased significantly. In any event, the Association argues that education is at risk and substantial pay increases are needed now to insure an adequate supply of high quality educators.

In reply, The Employer states that the only significant difference between the costing of the offers of the parties is the Employer's health insurance premium. It disputes the Association's claim that the cost forward method does not represent the real cost to the Employer. It asks, if not that, then what does? It, also, argues that the mere fact that it makes projections for health insurance purposes does not invalidate the method of comparison. Every employer must estimate its costs. The Employer argues that health insurance projections are critical to the outcome of this dispute and that the Association is trying to low ball their figures. The Employer reiterates that because of the return to a traditional salary schedule, the dollar and percent at the benchmarks is not a valid method of comparison. It sees no appreciable difference between offers at the benchmarks and the fact that the Employer has historically granted large increases in the past should tip the scale in the Employer's favor. While the Employer concedes that the local economy is improving, it notes that this is a fragile recovery from a long drought. It believes that if in the past arbitrators have not accepted the poor economy as an excuse for lower settlements, then the reverse should not be an excuse for higher settlements. In any event, it sees a 12% increase in tax rate as justification for its offer. The Employer denies that national studies on education or improvement in teacher salaries should have a bearing in this case.

In reply, the Association argues that the Employer own argument that the Association's health insurance estimates are wrong supports the Association position and not the Employer's. It argues that projections based upon the last year's increase are unreliable and that comparables suggest that the Association's second year impact is closer to realistic. In any event, it is this unpredictability which mitigates against using total package for comparison and makes the use of salary only comparisons most compelling.

The Association finds the Employer's position inconsistent in that it wishes the Arbitrator to disregard second year settlements while urging it to consider the second year of this agreement in making comparisons. Similarly, it sees no reason to disregard second year settlements, noting that prior arbitrators between these parties rejected these arguments and the Employer has adduced no specific facts to justify distinguishing these settlements. Further, it agrees that while Sturgeon Bay is

somewhat different than Mishicot, it is well within the comparable range as well established by previous arbitrators between these parties.

The Association reiterates its arguments that salary only should be the method of comparison, adding the argument, that in the cases cited by the Employer, the arbitrators relied upon the first year proposals of two year agreements for comparison.

The Association states that the Board's position rejects the fact that Mishicot teachers are very productive, especially in light of the Employer's allegedly minimal local tax effort.

DISCUSSION

Costing

In essence, the parties agree as to the costing for 1989-90. The parties also agree as to the salary increase costing for 1990-1. The parties disagree for 1990-1 as to the package costing, in important part, only as to the health insurance premium increase estimate. The Employer estimates the premium increase to be 24% while the Association estimates it to be 15%.

For 1989-90, the Employer received an unexpectedly high 24% increase in total health insurance premium. The parties have no direct information as to what the premium for 1990-1 will be and the Employer based its estimate for 1990-1 on the previous year. There is no evidence as to how the Association based its estimate. This difference essentially accounts for the .5% difference in total package calculations.

External Comparisons

Group

In 1983, Arbitrator Yaffe issued an award between the parties herein rejecting the Employer's argument seeking to use the smaller schools of the Olympian conference as the primary comparison group between the parties and, also, rejecting the Association's proposed three groups of comparables, setting Algoma, Kewaunee, Southern Door, Sturgeon Bay, Denmark, Brillion, Chilton, Kiel, Valdars, Freedom and Reedsville as the primary comparison group for Mishicot. He based his decision upon 1. similarity of level of responsibility, the services provided, and education required of the employees; 2. geographic proximity; 3. similarity of size of the employer.^{2/} In so doing, he expressly rejected using athletic conference as a basis and he did not separately consider the economics of each comparable.

The parties have continuously used the same comparisons in

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School District of Mishicot (Decision No. 19849-B) 2/83.

bargaining at all times thereafter. The parties' next interest arbitration occurred with Arbitrator Petrie in October, 1987.^{3/} The Employer relied upon the established comparison group, but sought to exclude the use of some districts therein because they had not granted increment increases, but instead used the money to elevate their schedules. Arbitrator Petrie relied upon the award of Arbitrator Yaffe, using the same comparison group, but applying a method of analysis that did not rely upon benchmark comparison.

The Employer seeks to exclude Sturgeon Bay herein because it no longer competes in the same athletic conference and that Sturgeon Bay is a larger district and is economically different and better off than Mishicot. The Association seeks to maintain the current comparable group on the basis of the prior awards and the fact that it has been used by the parties over the years.

Mishicot is an entirely rural district, while Sturgeon Bay is an entirely urban district. By virtue of location though, about a third of both districts are employed in manufacturing, while a third of Mishicot and half of Sturgeon Bay are employed in service jobs. Unlike Sturgeon Bay, which has virtually no agricultural employment, about 14% of Mishicot's population is employed in agriculture. In 1986 Sturgeon Bay was the highest income district of the comparable group, while Mishicot was in the lower middle range. In 1987 Sturgeon Bay dropped to second, but in 1988 again rose to the highest. Sturgeon Bay is largest district in the comparison group, 94 FTE, while Mishicot is among the smaller 55.6 FTE. It does not appear that this has significantly changed.

The comparison group established by Arbitrator Yaffe was based upon standards accepted by arbitrators and emphasized size and location over specific local economic variations. Even though he did not consider local economics, the facts indicate that the vast majority of residents in both locations are employed in service and industry occupations, even though only Mishicot is directly affected by agricultural concerns. Under the specific facts of this case, the decision of Arbitrator Yaffe is well within the range of appropriateness. Further, the facts offered by the Employer do not establish changed circumstances necessitating a change in the comparison group. I don't find any basis to change the established and reasonably accepted comparison group.

Prior Year Settlements

Final offers were certified or settlements reached as follows:

^{3/}Mishicot School District (Med/Arb.-4106) 10/87.

Sturgeon Bay	2/88	1988-92
Valders	6/88	1988-90
Kewaunee	9/88	1988-90
Freedom	11/88	1988-90
Denmark	8/89	1989-91
Brillion	9/89	1989-91
Algoma	10/89	1989-91

The settlements in Sturgeon Bay and Valders are relatively comparable to the settlements that have been made to date in other comparables for the years 1989-90 and 1990-91. During the years since the Valders and Sturgeon Bay settlements occurred the local and national economic situation has remained essentially the same, if not improved. Accordingly, I see no reason to discount these settlements for comparison purposes.

Application

The essence of the parties' debate over whether to use salary only external comparisons or total package external comparisons is how, if at all, to account for health insurance increase differences. Contrary to the position of the Association, the total compensation criterion requires that arbitrators recognize and consider differences between non salary compensation between comparable employers. The assumption underlying the most valid usual salary increase only comparisons is that benefit packages and increases are likely to be, or were, relatively the same. This is clearly not true in this matter in which among the comparables there have been health insurance premium increases ranging from none to 32% for 1989-90, with Mishicot being in the higher group.

The Association is fully correct that the use of package figures relies upon the quality of predictions (where applicable), uniformity of method of costing among the comparables and accuracy applying those methods. Collective bargaining is a process of planning parties' relationships with the best information practically available. A large part of bargaining is sharing information and clarifying positions based upon that information. If the arbitration process is to be a successful extension of this process and serve to encourage better bargaining, arbitrators must evaluate the methods of comparison available to choose the ones that most serve the shared interests of the parties to a specific dispute and give the best overall picture of the dispute. This encourages a litigation process that focuses on the most important aspects of their negotiations, the quality and reliability of these vital assumptions, rather than choosing the easiest method of comparison.

In this case, total package comparison gives the fairest view. The Association has correctly challenged the credibility of some of the figures used by the Employer for total package comparison for 1989-90; however, making appropriate adjustments,

the Employer's total package offer clearly is to be preferred. Seven of the comparable districts have settled. The Employer total package offer for 1989-90 is 7.0% and the Association's is 7.4%, while the average of the settled districts is 6.7% at a minimum and may be slightly higher if the Association's argument is entirely correct. Even allowing for this potential error, the Employer offer is clearly more comparable.

For 1990-91, only four of the comparison districts have settled. On a salary increase basis only, ignoring the facts discussed below, the Association's offer is close to the average, while the Employer's is clearly below. The fundamental difference between the parties' total package costing is the Employer's assumption of 24% increase in health insurance premium, while the Association predicts a 15% increase. The Association's assumption appears to be based upon its settlement in Algoma, but no evidence was offered to support it. The Employer's assumption was based upon the established 1989-90 increase of 24%. The Employer offered the only evidence, published news accounts of likely changes in insurance premiums. The best available information in this record indicates that increases for 1990 will range in the 20% to 30% range. It appears from the available evidence that the Employer estimate is the best available.

The average total package increase of the four comparables which have settled for 1990-1 is 6.8%. The Employer offer is 7.0% while the Association's is 7.66%. It seems most likely that the Employer offer will be closer to comparable. Particularly given the strong comparability of the Employer's first year position, the comparability factor heavily favors the Employer.

Cost of Living

For the period July, 1988, to July, 1989, the applicable CPI rose 5.1%. Compared to the total package offered by the parties for 1989-90, this factor clearly heavily favors the Employer.

Interests and Welfare of the Public

The Association has offered a considerable volume of public policy information suggesting that overall public education will benefit from higher salaries for teaches in general. Fundamental policy considerations of this nature are issues which are properly addressed to federal and state legislation. At the local level, they are an issue of local policy which properly is the local board of education's decision.

Mishicot shares many economic circumstances with most of its comparable districts. Mishicot, as most of the comparables with significant farm economies, is recovering from the drought. The Employer correctly asserts that settlements in comparable districts struggling to strengthen their farm economies best demonstrates the balance between wage increases and local economic needs.

This tends to be confirmed by the direct evidence of the tax situation in Mishicot. Mishicot had a 12% increase in its levy rate for 1989-90. For 1989-90, Mishicot has the lowest mill rate of all comparable communities. Mishicot, also, lost about \$43,000 of state aid, with only Valders, Reedsville and Kewaunee losing as much or more. The Association's offer herein will not result in an inordinate tax rate or an inability to maintain important services.

Under the facts of this case, the maintenance of comparable, competitive salaries for unit teachers is the best way of insuring the retention of quality experienced staff, not only now, but in future years. It, also, is likely to continue the parties efforts at maintaining salaries attractive to highly qualified new teachers in the future.

Summary

All of the factors involved in this case support the final offer of the Employer, accordingly, the offer of the Employer is accepted.

AWARD

That the final offer of the Employer be incorporated into the parties' collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 14th day of May, 1990.

Stanley H. Michelstetter II

Stanley H. Michelstetter II
Arbitrator